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ABSTRACT

In preparation for compliance with the new Copyright Act effective in January 1978, the photocopy regulations of the Act were examined and the effects of these regulations on library photocopying services were assessed. The literature concerned with the controversy over the photocopying of copyrighted works, the "fair use" doctrine, and the history and regulations of the new copyright law were reviewed. The procedures of the five photocopying services presently offered for faculty by the Miami-Dade Community College South Campus Library were examined; these services included copies for instructional use, interlibrary loan, missing page requests from cooperating libraries, library reserve, and a "Table of Contents Service" providing faculty with contents pages of current periodicals. Analysis of library photocopying statistics and procedures indicated the need for the library to revise its photocopying procedures in order to be in compliance with the new law. Necessary changes included: (1) revision and posting of copyright warning signs on all library copying machines; (2) revision of photocopying request forms to provide a record of the types of material copied, the approximate number of words per request and the name of the author of the work being copied; and (3) maintenance of a monthly record of the total number of times that photocopies are made from the same periodical title and issue. An extensive bibliography is included. (Author/JDS)

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AN EXAMINATION OF THE 1978 COPYRIGHT LAW'S PHOTOCOPYING REGULATIONS AND THE EFFECT THEY WILL HAVE ON LIBRARY COPYING SERVICES

by

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ABSTRACT

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In preparation for compliance with the 1978 Copyright Law, the photocopy regulations of the forthcoming Law were examined and the effects of these regulations on library photocopying services were assessed.

The literature concerned with the controversy over the photocopying of copyrighted works, the fair use doctrine and the history and regulations of the 1978 Copyright Law was reviewed. The procedures of the photocopying services presently offered by the South Campus Library of Miami-Dade Community College were examined, and statistics obtained from the Library's 1976 photocopying services were tabulated.

The results of these three methods of investigation were utilized to answer thirteen questions pertinent to library photocopying of copyrighted materials. The findings indicated the need for the Library to revise its photocopying procedures in order to be in compliance with the Law.

The recommendations resulting from the study were: (1) that the copyright warning signs be revised and posted on all Library copying machines; (2) that the Request Form for Photocopying of Library Materials for Instructional Use be expanded to record the types of materials being copied, the approximate number of words per request and the name of the author of the work being copied; that the Library keep a monthly record of the total number of times that photocopies are made from the same periodical title and issue; (4) that the South Campus Library make the study available to interested faculty; and (5) that additional interpretations of the photocopying regulations of the 1978 Copyright Law be attached to the study as they become available.

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Chapter 1

INTRODUCTION

The first major revision of copyright law since 1909 will have a direct effect on most library photocopying including the photocopying services of the South Campus Library of Miami-Dade Community College. The purpose of this study was to arrive at guidelines for the South Campus Library's photocopying services that are within the boundaries of the 1978 Copyright Law.

The procedure for completing the study was to obtain answers to the following questions:

1. What is copyright?
2. What is the background of the controversy over the photocopying of copyrighted materials?
3. What interest groups are involved in the photocopy controversy?
4. What is the doctrine of fair use?
5. How did the doctrine of fair use evolve?
6. What is presently considered an infringement of fair use?
7. What is the legislative history of the Copyright Act that will become law January 1, 1978?
8. What regulations will the new 1978 Copyright Law contain for the photocopying of copyrighted works?
9. What photocopying services does the South Campus Library

provide for faculty?

10. What are the guidelines for the South Campus Library's photocopying services and how are they monitored to prevent copyright infringement?

11. How many copies of copyrighted materials were made during 1976 for each of the South Campus Library's photocopying services?

12. Are the South Campus Library's photocopying guidelines and 1976 statistics within the boundaries of the photocopy regulations of the new 1978 Copyright Law?

13. If the South Campus Library's photocopying guidelines and 1976 statistics are not within the boundaries of the photocopy regulations of the new 1978 Copyright Law, how can they be modified to comply with the new Law?

Three methods of investigation were used to answer the thirteen questions:

1. A review of the literature was conducted. The literature review included:
   a. A study of the controversy over the photocopying of copyrighted works.
   b. A study of the interest groups involved in the photocopying controversy.
   c. A study of the development and implementation of the doctrine of fair use.
   d. A study of the legislative background of the 1978 Copyright Law.
   e. An examination of the photocopying and related sections of the 1978 Copyright Law.

2. The photocopying procedures for the following South Campus Library services were reviewed:
   a. Copies for Faculty for Instructional Use.
   b. Interlibrary Loan.
   c. Table of Contents.
   d. Missing Page Requests.
   e. Reserve.
3. Statistics from the South Campus Library's 1976 photocopying services were obtained from the 1976 photocopy request forms and tabulated to obtain the following information:
   a. The number of photocopies that were made of copyrighted works.
   b. The number of photocopies, for each South Campus Library photocopying service, that were made of copyrighted works.
   c. The number of pages photocopied from periodicals.
   d. The number of pages photocopied from books.
   e. The average number of pages, per request, that were photocopied.
   f. The number of times that photocopies were made from the same periodical.
   g. The number of times that photocopies were made from the same issue of a periodical.

The answers to the thirteen questions, that were obtained from the three methods of investigation, were used to recommend guidelines for the South Campus Library's photocopying services that are within the boundaries of the 1978 Copyright Law.

Chapter 2

BACKGROUND AND SIGNIFICANCE

Legislation at the federal level has had a profound influence on all aspects of education in the last twenty years. Educational institutions must study all new federal legislation that is related to their operations. It is important to understand the interest groups involved and the background of the law, as well as the law itself. The rights of those protected by federal legislation must be thoroughly understood by educators in order to avoid establishing policies that infringe these rights.

Recent federal legislation that will have an impact on faculty, students, librarians and administrators of educational institutions is the Copyright Act which will become law January 1, 1978. This first major revision of federal copyright law since 1909 will affect many aspects of our society. According to Kent (1971, 76):

> The quality of an age depends primarily on its intellectual and artistic creations. This quality is affected in turn by the appreciation, the protection and the encouragement given their creators. The law of copyright is thus the law that helps to shape the culture of our society, for it is a major factor in determining what books we read, what art we enjoy and what music we hear.

Copyright can be defined as "the right of an author to control the reproduction and dissemination of his work after

it has been disclosed" (Congressional Quarterly Service, 1965, 658). If taken literally, this definition would mean that the author's permission would have to be obtained before any photocopying could be done. However, most libraries photocopy copyrighted materials under the doctrine of fair use. This does not appear in the 1909 Copyright Law, which is still in effect until January 1, 1978, but it is the result of a "Gentlemen's Agreement" in 1935 between the Joint Committee on Materials for Research and the National Association of Book Publishers (Cuadra, 1974). According to Cuadra (1974, 390), "the 'Gentlemen's Agreement" permitted library photocopying of 'a part' of copyrighted material for scholarly research...." As photocopying became more prevalent, libraries tried to define fair use more explicitly. The factors that libraries consider important in determining fair use are (Cuadra, 1974):

1. The type of use involved.
2. The intent of the user.
3. The effect of the use on the original work.
4. The amount of the user's labor involved.
5. The benefit gained by the user.
6. The nature of the work.
7. The amount of material used.
8. The relative value of the material used.

The difficulty with these criteria is that they are vague and very difficult to monitor.

The controversy over the photocopying of parts of copyrighted works has increased in the last few years because libraries have become more and more user oriented, photocopying

equipment has become so accessible, faculty are relying more on photocopies of library materials for their teaching and research and publishers of both books and periodicals have begun to feel the loss.

The South Campus Library makes approximately 11,000 photocopies of copyrighted library materials a year for faculty instructional use, interlibrary loan, the Library's Table of Contents Service, Library reserve and missing page requests from the other three Miami-Dade libraries. The Library has interpreted the doctrine of fair use to mean that it can make one copy of an article in a periodical or a chapter in a book, as long as the article or chapter is approximately ten pages or less. The person requesting the copies must complete a request form designed by the South Campus Library. (See Appendix A.) The form contains the notice that any infringement of the Copyright Code from the copying requested is at the patron's risk and the Library reserves the right to refuse to make the requested copies if it would result in a known violation. Each photocopy request must be approved by the Chairman of the Periodicals Department of the South Campus Library before the copies can be made. It is the responsibility of the Chairman to determine whether or not each photocopy request is within the boundaries of fair use.

The goal of this study was to arrive at photocopy guidelines for the South Campus Library that would be within the boundaries of the Copyright Law of 1978 and that would provide adequate photocopy services.

The objectives of the proposed study were:

1. To examine the photocopy regulations of the Copyright Law

of 1978.

2. To assess the need for the photocopying services that the Library persently provides.
3. To trace the development of the doctrine of fair use and identify the interest groups involved in the photocopying controversy in an effort to understand the background of the photocopying regulations of the 1978 Copyright Law.
4. To make the results of the proposed study available to interested faculty.
5. To recommend library photocopy service procedures that would meet the needs of faculty without infringement of the 1978 Copyright Law.

The results of the proposed investigation are being used to establish new guidelines for photocopying at the South Campus Library within the framework of the Copyright Law of 1978 and the study is available to members of the South Campus faculty who have questions about the impact of the new law on photocopying. The study was approved by the South Campus Library Director. (See Appendix B.)

Chapter 3

REVIEW OF THE LITERATURE

Introduction

The modern concept of copyright evolved in Britain in the sixteenth century and the colonists brought these concepts with them to America where "statutes for copyright protection were among the earliest laws enacted....Between 1783 and 1786, twelve of the thirteen original states adopted copyright statutes patterned after the English statutes" (Congressional Quarterly Service, 1965, 658). The United States Constitution provided the basis for copyright by empowering Congress to encourage the arts and sciences.

The first federal copyright law became effective May 31, 1790. It protected books, maps and charts that were registered with the United States district court for a period of fourteen years plus renewal for fourteen years (Cole, 1970). The first general revision of the 1790 Law came in 1831 with an extension of the original term of copyright to twenty-eight years. The second major copyright revision occurred in 1870 with the Library of Congress becoming the center for copyright registration and the main depository for copyrighted works (Cole, 1970). In 1909, the third major revision of copyright was signed into law. According to Cole (1970), the 1909 Law extended copyright to certain unpublished works, established

that the date of copyright should be the date of publication and extended copyright renewal to twenty-eight years. This third revision in 1909 was the last major revision of copyright law until the new Copyright Act, which will become law January 1, 1978.

Copyright was established to protect the creator's economic interests and to promote cultural growth by encouraging creative endeavour. Baynham (Fall, 1966, 83) defined copyright as follows:

> A copyright...is a form of protection given by the law of the United States to the authors of literary, dramatic, musical, artistic and other intellectual works. The rights granted variously include the right to print, reprint and copy the work; a right to perform the work publicly if it is a literary, dramatic or musical work; the right to sell or distribute copies of the work; the right to transform or revise the work publicly if it is a literary, dramatic or musical work; the right to sell or distribute copies of the work; the right to transform or revise the work by means of dramatization, translation, musical arrangement or the like; and the right to record the work.

The Congressional Quarterly Service (1965, 658) provided a further clarification of copyright by stating that:

> Copyright is the right of an author to control the reproduction and dissemination of his work after it has been disclosed. Copyright does not preclude others from using the ideas or information contained in the work; it pertains to the literary, musical, artistic or graphic form in which the concepts are expressed. The primary purposes of copyright legislation were to foster the creation and dissemination of works for the public benefit and to give authors due reward for their contribution to society.

Both of these definitions of copyright stress the rights of the creator. However, Hug (1974) felt that the concept of copyright was based on the public interest in learning instead of private property rights. He based his definition of copyright on section

eight of article one of the Constitution which "gives the Congress the power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (Hug, 1974, 107).

The two forms of copyright are common law and statutory. Common law copyright applies to unpublished works and it is administered by the states while statutory copyright applies to published works and is regulated by the federal government. The common law copyright doesn't provide clear proof of ownership but Siebert (1964) said that its advantages included broader rights, no time limit and no registration requirements. While there is no time limit, common law copyright on a work is forfeited as soon as the work is published. According to Siebert (1964), statutory copyright has the disadvantages of registration requirements and more limited rights but it also has the advantages of more definite rights, penalties for infringement, procedure for transfer of ownership and copyright notice in the work. Since statutory copyright is at the center of the photocopying controversy, the copyright referred to in the remaining review of the literature will be statutory copyright.

Among the items that can be registered with the Copyright Office are books, periodicals, lectures, dramatic compositions, musicals, maps, works of art and photographs (Library of Congress, 1974). To register any of these items, an application must be filled out by the creator of the work and sent to the U. S. Copyright Office at the Library of Congress, Washington, D. C. (Kent, 1971). When a certificate of registration

is received from the Copyright Office, the applicant must forward $6.00 and two copies of the registered work to the Register of Copyrights in Washington, D. C. (Kent, 1971). The registered work must contain a copyright notice which should be the symbol for copyright or the word "copyright", the name of the copyright owner and the year the copyright was obtained (Pipel, 1966). A book that is copyrighted should have the notice on the title page or on the reverse side of the title page. The copyright notice for a periodical may appear on the title page or on the front cover under the title on the first page.

The 1909 Copyright Law is indefinite and difficult to enforce. It was designed to protect the economic interests of the author rather than to contribute to the advancement of learning by making copyrighted materials easily accessible to the public. According to Ringer (1976), copyright in the 1980's will be more concerned with the public interest in knowledge. She predicted that the creators' economic interests will be considered but the creators will not have control over the use of their works.

The Photocopying Controversy

The advance of photocopy technology in the last ten years has led to a crisis in copyright. Photocopying machines, which are located in most libraries, are easy to use and provide inexpensive copies quickly. A May 1, 1972 article in Time "Stated that there were 600,000 copying machines in the world, producing 30 billion copies each year" (Caughran, October, 1973, 9). The increase in photocopying, according to

Crossland (1968), is partly due to the need for instantaneous information and the tremendous increase in printed material which makes it impossible for one researcher, or even one library, to own all the material on a subject. As a result, photocopies of materials are often obtained through interlibrary loan. Facsimile transmission is also available for transporting copies via telephone lines to researchers. Bush (1972, 69) stated that "fascimile transmission will someday make it possible for one library in a network to use a single copy of a journal or book to supply all libraries in the network."

The problem is that many of the items copied are copyrighted and the copies are made without the permission of the copyright owner. Bush (1972, 321) said that "the photocopy machine has put the means of infringement within the reach of all." According to Henry (February 1, 1974), photocopying is actually republishing and so it is illegal under the Copyright Act of 1909.

Copying of copyrighted works has alarmed both book and periodical publishers and authors. They claim that a person, who can obtain a copy of the portion of the book or periodical needed, will no longer purchase it (Stedman, October, 1976). Henry (February 1, 1974) felt that the problem for periodical publishers was magnified by the fact that many periodicals are published on a marginal basis and any loss of circulation caused by photocopying might be detrimental to the periodical publisher. According to Bush

(1972, 68), "concern over maintaining sources of scientific and technical information has already led the federal government to subsidize page costs for journals in the physical sciences."

Some publishers have felt the economic consequences of photocopying to such an extent that they have brought lawsuits against libraries and individual educators. The most famous of these was the Williams and Wilkins Case which revolved around the photocopying by the National Institute of Health and the National Library of Medicine of copyrighted medical journals published by the Williams and Wilkins Company (Doebler, July, 1972). According to Cuadra (1974), the National Institute of Health made 930,000 copies from journals in 1970 and in 1968 the National Library of Medicine photocopied approximately 120,000 journal articles. Stevenson (August, 1975) reported that the copying was limited to one copy of an article but, in some cases, as many as fifty pages were copied from one journal. Williams and Wilkins, a publisher of medical journals, claimed that a royalty should have been paid by the libraries for the copying, but the libraries pleaded that the copying was for interlibrary loan and was within the boundaries of the doctrine of fair use (Doebler, July, 1972). The Commissioner of the Court of Claims ruled in favor of Williams and Wilkins, but, on November 27, 1973, the full court of claims overruled him because Williams and Wilkins could not prove financial loss (Baynham, Fall, 1976). The case was taken to the Supreme Court, but there was a tie vote

and the decision of the Court of Claims stood (Cuadra, 1975).

The Williams and Wilkins case brought the photocopy controversy to the attention of more people, but it didn't really solve the problem. It became evident, after the Williams and Wilkins decision, that the courts could not solve the copyright controversy within the framework of the 1909 Copyright Law. The interest groups in the controversy looked to Congress to revise the 1909 Copyright Law in an effort to end the photocopy controversy.

The Interest Groups Involved

There are four major interest groups involved in the controversy over the photocopying of copyrighted works. The authors and publishers have a private interest in compensation for their creative efforts, while the librarians and educators are interested in disseminating information to the public (Bush, 1972). Publishers and authors, in an effort to protect their ownership rights, have taken a stand against educators and librarians who feel that it is their right to photocopy library materials for instructional use.

It is the contention of the periodical and book publishers that the public will not buy the periodical or book to read the ten pages or so that really interest them, if they can copy those pages for a few cents (Bush, 1972). This results in a diminishing market for the publisher's works. Some publishers have felt the economic consequences of photocopying to such an extent that they have brought lawsuits against libraries and individual educators. According to Lukac (1972, 26):

> What impels the publisher...to protect the expected income from the sale of its published work is the inexorable rule that if income from sales or from other rights is less than outgo for the cost of production and the cost of the required capital, publishing will become uneconomic and therefore not possible except as subsidized or fully supported by government. It is perhaps not too melodramatic to suggest that if that day should come, there will be little left of freedom of the press as we know it now.

To compensate for the loss of revenue from copying, publishers would prefer to charge a royalty for the copying rather than have copying prohibited altogether (Lukac, 1972).

Spreitzer (Spring, 1973, 147) was critical of the publisher's need for compensation and said that "the crux of the matter appears to be some publisher's discovery that library photocopying is not so much a threat to be feared as a money-making opportunity to be exploited." According to Tallman (May-June, 1974, 149):

> It is the publishers who have lagged in the marketing and distribution of single copies of articles. They are as yet not really prepared to supply, or interested in supplying, on a large scale, single copies, reprints, or permission to reproduce single specific articles. They feel no obligation to keep their titles in print and readily accessible as a public service to their ultimate customers, the users. Their response time to requests to buy or reproduce is so slow or non-existent that the user's needs are not served.

Lukac (1972) mentioned that a clearing house for copying has been suggested to aid publishers with the above problems, but that, so far, publishers have felt that the cost of a clearing-house was prohibitive.

The author's views of the photocopy controversy are similar to those of the publishers. However, the author, as the creator of the work, has more than just an economic interest

in the utilization of the work. The intent of copyright, in the past, has been not only to compensate authors, but to encourage them to continue to write. The author does not want to see his writings copied verbatim anymore than he wants to see his royalties diminish. Kent (1972, 104) describes writing as a labor that is "at once creative and tedious and exasperating" and he feels that the author should be substantially rewarded for his efforts. According to Lukac (1972), many authors make their living from the royalties obtained by granting people permission to copy parts of their works. Photocopy infringement may diminish the profit from these royalties. Lukac (1972, 47) said that "if the author is not paid and the technology carries us further, we are going to have to figure out some other ways to pay the author if you want him to write."

Educators have found the photocopy machine to be a welcome aid to their classroom instruction. They want to be able to photocopy copyrighted materials for their research and to be able to make multiple copies for classroom use. According to Cuadra (1974, 393):

> Advances in information technology have provided educators with a variety of technical apparatuses. These tools permit a more flexible, imaginative and, in many cases, individualized approach to education. But in most cases these tools act on or use copyrighted materials. The dilemma, so the educators say, is how to make maximum use of this technology without being burdened by the requirements of copyright law.

Bush (1972) felt that educators were infringing on the authors' and publishers' rights, but that the infringements were done unwittingly and were not willful violations. In discussing

violations of the copyright law, Caughran (October, 1973, 9) said that:

> Those in the teaching profession may comprise the largest group of people who are violating the present law and that the rate of violation has undergone a tremendous increase due to the increase of copying machines and the lack of a corresponding increase in knowledge of the provisions of the copyright law.

Educators stress the importance of the public interest in access to copyrighted materials over the economic interests of authors and publishers. They argue that a photocopy of the author's work will familiarize their students with the author's work and, as a result, create a market for the author's writing (Ad Hoc Committee on Copyright Law Revision, 1973). Crossland (1968) reported that educators felt that the main purpose of copyright was to promote the arts and sciences and that they should be exempted from having to follow strict copyright regulations. Bush (1972, 329) said that educators feel that "copyright is not a right but a privilege, which can be limited or removed for the benefit of society."

Groups of educators have met since the early 1960's in an attempt to clarify their position in the photocopy controversy and to provide input for the revision of the 1909 Copyright Law. They formed the Ad Hoc Committee on Copyright Law Revision in 1962 and, in 1973, this Committee outlined the following needs of educators in regard to a new copyright law (1973, 3):

> Teachers and learners in the schools of the '70s need: (a) Reasonable access to print and non-print materials for instructional purposes; (b) Reasonable certainty that a given use of a copyrighted work is permissable; (c) Certainty that the present law's

> "not-for-profit principle, granting special exemptions for non-profit uses of copyrighted materials, will be extended; (d) Assurance that teachers who innocently infringe the law will be protected; (e) A new copyright law that will support, rather than thwart, the use of the new technology in the schools; (f) Assurance that the doctrine of "fair use" will be extended to the use of instructional television, computers, automated systems and other developments in educational technology.

It is evident from these needs that educators have found the doctrine of fair use helpful, but they have felt uneasy because of the uncertainty of the validity of the doctrine. The education interest group has lobbied for inclusion of the doctrine of fair use in the new law and for clarification of the copying rights of educators under fair use.

Librarians, who provide the photocopying services, see their role as intermediaries between copyright owners and educators (Kent, 1972). Kent (1972, 31) said that:

> Librarians, because they appreciate the value to society of works of authorship and play a major part in the process of disseminating those works, can feel the close kinship of their own role with those of authors and publishers.

According to Lukac (1972, 25), librarians also consider it one of their prime functions to provide materials for research and classroom use via photocopying machines. In addition, librarians benefit from photocopying because they do not have to circulate the original material and patrons are less likely to tear out an article if they can make a copy (Henry, February 1, 1974). North (May, 1972) felt that it would be impossible for libraries, who want to provide prompt and efficient service, to have to request permission from the publisher or author

before each copy is made. Especially since statistics obtained by the Committee to Investigate Copyright Problems Affecting Communication in Science and Education indicate that sixty percent of the material copied by libraries is copyrighted (Henry, February 1, 1974).

The increase in the numbers of periodicals published and in the rising costs of subscriptions has made it impossible for many libraries to purchase the journals necessary for an adequate collection. As a result, libraries obtain photocopies of articles, that their patrons request, from other libraries through interlibrary loan. According to Thomson (1970, 2):

> The purpose of interlibrary loans is to make available, for research, materials not owned by a given library, in the belief that the furtherance of knowledge is in the general interest. Interlibrary loan service supplements a library's resources by making available for the use of an individual, materials from other libraries not owned by the borrowing library.

Otherwise, the individuals would have to have the time and money to travel from one library to another to obtain their materials (North, May, 1972). The testimony in the Williams and Wilkins Case revealed that "over 84% of requests for periodical articles are satisfied by photocopies" (Supreme Court of the United States, 1973, 6).

According to Lukac (1972, 16), the questions that concern librarians most with respect to copyright are:

> (1) How far can I go in allowing unsupervised use of copying machines in a library? (2) How far can I go in filling orders for photocopies? (3) How far can I go in replacing deteriorating copies in our collection? (4) How far can I go in supplying photocopies for interlibrary loan?

Lukac (1972) said that librarian's particularly resent being accused of infringing the copyright owner's rights when they are trying to fulfill their goal of serving their patrons. The American Library Association (1974, 13) took the position "that the mere fact of photocopying alone is not sufficient to establish an infringement of the copyright monopoly." Librarian's point out that infringement occurs when the copies are used by the patron and the libraries are simply copying the materials and are not the end users (Stedman, October, 1976).

The American Library Association (1974, 5) stressed the importance of the outcome of the photocopying controversy for libraries by commenting that:

> Involved in this debate over the right of libraries to photocopy material that they own is the ultimate question of how America's libraries will adapt to modern technology -- to systems management, computerized data storage and expanding communications networks.

It is apparent that the interest groups involved in the controversy over the photocopying of copyrighted works have opposing views that will have to be reconciled by the 1978 copyright legislation. Kent (1971, 80) summarized the problem well by saying:

> It is obvious that a satisfactory law of copyright requires a careful balancing of the interests of the members of the three groups...for the author must write in order for the publisher to publish and the user must purchase if the publisher is to publish. The author wants to protect the integrity of his work and to profit from it. The user wants to utilize the work and wants all users to have the same rights.

The Doctrine of Fair Use

The doctrine of fair use has evolved in an effort to solve the photocopying controversy. The idea of fair use was first introduced in 1924 when a bill was sent to the sixty-eighth Congress to permit the reproduction of copyrighted works for educational uses, public performances, special uses of a public nature and the reproduction of artistic works (Crossland, 1968). However, the bill did not define fair use very well and Congress did not pass it.

In 1935, the Joint Committee on Materials for Research and the National Association of Book Publishers revived the idea of fair use by signing a "Gentleman's Agreement" regarding the reproduction of copyrighted books and periodicals. Kent (1971, 73) said that the 1935 agreement stated "that a library could make a single photocopy of a part of a book or periodical volume in its collections for delivery to a scholar who represented in writing that he desired to photocopy...solely for the purpose of research." The "Gentleman's Agreement" prohibited copying of the entire book or periodical. The agreement specified that libraries inform the user of the copies of the copyright regulations and that the user sign a form stating that he would use the copies only for instructional or research purposes (Baynham, Fall, 1976).

According to Kent (1971), the doctrine of fair use has become the 'safety valve' of copyright by attempting to balance the interests of the authors, publishers, educators and librarians. Since 1935, the courts and the interest groups

involved in the controversy have attempted to interpret fair use. The Ad Hoc Committee on Copyright Law Revision (1973) stated that each court case has been unique and that no real definition of fair use has emerged from the court deliberations. However, a set of criteria has emerged from the court cases. The criteria the courts have used to determine fair use are: (1) the purpose of the use, (2) the nature of the material copied, (3) the extent of the copying and (4) the loss of profit by the author (Henry, February 1, 1974).

While the courts were attempting to define fair use, libraries were also trying to interpret the fair use doctrine. Cuadra (1974, 396) reported that the 1961 findings of the Joint Libraries Committee on Fair Use were:

(1) The making of a single copy by a library is a direct and natural extension of traditional library service.
(2) Such service, employing modern copying methods, has become essential.
(3) The present demand can be satisfied without inflicting measurable damage on publishers and copyright owners.
(4) Improved copying processes will not materially affect the demand for single copy library duplition for research purposes.

According to the Library of Congress (1975), one of the problems that libraries have with fair use is determining, from the patron requesting the photocopies, how the copies will be used.

The lack of a definitive interpretation of the doctrine of fair use by the courts has forced librarians and educators to take the responsibility for interpreting fair use. It is encouraging to note that, with the Copyright Law of 1978, the doctrine of fair use has been defined and incorporated in

federal legislation, for the first time.

The Legislative Background of the 1978 Copyright Law

Although a few copyright revision measures were introduced in Congress in the 1930's and 1940's, a general revision of the 1909 Copyright Law was not seriously considered until 1955. It had become apparent, by 1955, that the 1909 Copyright Law could not adequately solve the controversy over the photocopying of copyrighted materials. According to Stedman (October, 1976), a series of studies of the copyright system was begun by the Copyright Office in 1955. The studies were completed in 1961 with the publication of thirty-five monographs on the major issues of copyright revision.

According to the Congressional Quarterly Service (1965), the 1961 report was followed by meetings of the interest groups in the photocopying controversy. Several interest groups formed committees to define their particular needs in relation to copyright and fair use. The American Library Association and four other library associations established the Joint Libraries Committee on Fair Use in Photocopying (Henry, Spring, 1971). In 1962, the copyright owners formed the Joint Copyright Committee of the American Book Publisher's Council and the American Educational Publisher's Institute which represented two hundred and four publishing houses. (Henry, Spring, 1971). The Ad Hoc Committee on Copyright Law Revision was created by educators in July, 1963. All of these interest group committees studied the photocopying problem and provided input to the Congress to aid in the congressional

copyright deliberations.

In 1964, a bill for the general revision of the 1909 Copyright Law was introduced in the House of Representatives as H.R. 11947 and in the Senate as S. 3008 (West Publishing Company, 1976). According to the Congressional Quarterly Service (1965, 659), Dr. L. Quincy Mumford, the Librarian of Congress, noted that the draft bill attempted to "synthesize or reconcile" sharply divergent interest and viewpoints. Henry (Spring, 1971) said that the 1964 bill defined and expanded fair use to apply to teaching, research and scholarship. No action was taken on the bill and the Copyright Office revised it and introduced it again in 1965 as H.R. 4347 and S. 1006 (West Publishing Company, 1976). Hearings were held in both houses but no action was taken.

The introduction of bills concerning copyright revision continued each Congressional session, until S. 1361 was introduced in 1973. According to Miele (1976), the Senate Judiciary Committee reviewing S. 1361 recommended that the interest groups involved in the photocopying controversy meet to work out guidelines for copying. The Conference on Resolution of Copyright Issues, led by the Register of Copyrights and the Chairman of the National Commission on Library's and Information Science, began meeting in 1974 (Miele, 1976). They agreed to finish their deliberations by 1976. Cuadra (1974) reported that S. 1361 proposed that a single copy of an entire work could be made, if the work could not be purchased, the copy was not used for commercial purposes and the

library making the copy displayed a copyright notice at the site of the machine and the library included a copyright warning on its copy request form. S. 1361 was not passed by Congress but Lukac (1972) felt that section 108 of S. 1361 set a precedent for future legislation by recognizing the right of libraries to make photocopies within the boundaries of fair use.

The next proposed copyright legislation to be introduced to the Congress was S. 3976 which passed and became Public Law 93-573 (West Publishing Company, 1976). On July 18, 1975, President Ford implemented the major provision of PL 93-573 by appointing twelve commissioners to a National Commission on New Technological Uses of Copyright. The Commission was composed of four copyright owners, four copyright users and four members of the general public. Non-voting members included the Librarian of Congress and the Register of Copyrights (Miele, 1976).

Senator McClellan introduced the next bill to amend the copyright law on January 15, 1975. This bill, known as S. 22, included the four major criteria of the fair use doctrine and permitted interlibrary loan photocopying, if the copy was not a substitute for the original (Mathiasen, 1976). Under the provisions of S. 22 (Mathiasen, 1976, 497), "a library would not be held liable for violations of copyright by persons using the library's photocopying machine as long as the machine carried information about copyright law." S. 22 passed the Senate unanimously on February 19, 1976 (West Publishing Company, 1976). According to Mathiasen (1976, 311), the House version of S. 22:

Added a provision not included in the Senate bill, stating that a library could participate in interlibrary loan arrangements for circulating copies as long as the practice was not done in "such aggregate quantities" as to substitute for a subscription or purchase of a work. It also required the Register of Copyrights to study the effect of the provision every five years and recommend changes when necessary.

The House passed its version of the copyright bill and, with Presidential approval, the revised version of S. 22 became Public Law 94-553. This first general revision of the Copyright Law since 1909 will become effective January 1, 1978.

The Photocopying and Other Relevant Sections of the 1978 Law

The 1978 Copyright Law provides protection for original works of authorship in the categories of literary works, musicals, dramas, pantomimes, choreographic works, pictorials, graphics, sculptural works, motion pictures, audiovisual productions and sound recordings. This study of the provisions of the Law was limited to those sections that are related, in any way, to the photocopying of copyrighted literary works.

The sources that provide the most information on the Copyright Law of 1978, at the present time, are the November 20, 1975 Senate Judiciary Committee Report number 94-473, the September 3, 1976 House Judiciary Committee Report number 94-1476 and the House Conference Report number 94-1733. The major provisions of these reports are reprinted and discussed in the U. S. Code Congressional and Administrative News by the West Publishing Company (1976).

Sections 101, 102, 105 and 106 of the new Copyright Law do not pertain directly to library photocopying but they should be read because they contain information which applies

to all categories of copyrighted works. Section 101 defines the terms used throughout the text of the Law. Section 102 lists the seven categories of works of authorship contained in the first paragraph of this review and states that copyright protection does not "extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work" (West Publishing Company, 1976, 2545). According to West (1976), the intent of section 102 was to keep the scope of copyright wide but not to allow unlimited copyright.

Section 105 of the new Law is the same as section 8 of the 1909 Copyright Law, which states that copyright cannot be obtained for works produced for the United States Government by its officers and employees, as part of their official duties. This should permit the unrestricted photocopying of books and periodicals published and produced by the United States Goverment.

Section 106 describes the exclusive rights of the copyright owner and the twelve sections that follow 106 describe the limitations to these rights. Under section 106 (West Publishing Company, 1976, 2546):

> The owner of copyright...has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental lease or lending; (4) in case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted publicly.

One of the limitations on the exclusive rights of the copyright owner is fair use which, for the first time, has been incorporated in a federal copyright law. Section 107 of the new Law lists four factors to consider in determining fair use. They are: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount of the work reproduced in relation to the length of the work, and (4) the amount the market for the work will diminish due to the reproduction of the work. The purpose of including fair use in the 1978 Copyright Law was to recognize the doctrine of fair use, but not to increase its scope or define it to such an extent that it would not be flexible enough to change as technology advanced. However, to assist educators in interpreting whether or not their copying is within the boundaries of fair use, the following guidelines accompanied the Copyright Act (Winkler, October 11, 1976, 1):

A teacher may:

(1) Make a single copy, for use in scholarly research, or in teaching, or in preparation for teaching a class, of the following: a chapter from a book; an article from a periodical or newspaper; a short story, short essay, or short poem, whether or not from a collected work; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

(2) Make multiple copies for classroom use only, and not to exceed one per student in a class, of the following: a complete poem, if it is less than 250 words and printed on not more than two pages; an excerpt from a longer poem, if it is less than 250 words; a complete article, story, or essay, if it is less than 2,500 words; an excerpt from a

> prose work, if it is less than 1,000 words or 10 per cent of the work, whichever is less; one chart, graph, diagram, drawing, cartoon, or picture per book or periodical.

All of the copying by instructors that is permitted under fair use must be spontaneous. According to Florida Schools (December, 1976), spontaneity, in relation to copyright, is defined as a close period of time between the decision to copy and the need to use the work, so that a request for permission to copy the work would be unreasonable.

The West Publishing Company (1976) listed some additional limitations on educational copying:

1. The copying must be for only one course in that particular School.
2. The copying must not exceed one short poem, article, story, essay or two excerpts from the same author. Nor must it exceed three copies from the same collective work or periodical volume during one class term.
3. Multiple copying for one course must not occur more than nine times during one semester.
4. The copying should not create or take the place of an anthology, compilation or collected work.
5. Copies cannot be made from textbooks.
6. Copies should not substitute for the buying of a book, periodical or reprint.
7. Copying should not be directed by an authority higher than the classroom teacher.
8. Copying of the same materials by the same teacher should not be continued from term to term.

Section 108 is as important to educators as section 107 since it concerns library photocopying of copyrighted works, which is often for educators. Section 108 (a) of the 1978 Law states that libraries and their employees, who make copies of copyrighted works as a condition of their employment, will not infringe the copyright law if they make one copy of a literary work for a library patron, providing that the following conditions are met (West Publishing Company, 1976, 2546-47):

> (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage; (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and (3) the reproduction or distribution of the work includes a notice of copyright.

Section 108 (b) authorizes libraries to reproduce archival materials in their collections for preservation and security or for research use in another library. This applies only to unpublished works.

Under section 108 (c), a library is given the right to reproduce a published work in order to replace a work that has been stolen, lost or damaged. Before reproducing the work, the library must ascertain that a copy of the work cannot be purchased for a fair price.

Section 108 (d) of the 1978 Copyright Law applies to the copying of an article from a periodical or other copyrighted work for a user or another library through interlibrary loan. The copying should not exceed one copy of one article from a periodical or a small portion of another type of copyrighted

work. The copy must become the property of the user, the library must not have any knowledge that the copy will be used for anything but research, study or scholarship, and the library must print on its order form and display, in the area where the copies are made, a warning of copyright (West Publishing Company, 1976). The Register of Copyrights will establish regulations for the copyright notice. The Copyright Office, in the March 30, 1977 Federal Register, requested that libraries submit samples of their present copyright warnings and suggestions for the new warnings to the Office by May 6th so that new display regulations will be ready by January 1, 1978 (Commerce Clearing House, 1977).

Section 108 (e) is concerned with library copying at the request of a user or for interlibrary loan, but it applies to the copying of an entire copyrighted work or a large portion of the work. Before the copying can be done, the library must establish that a copy of the copyrighted work cannot be purchased for a reasonable price. Again, as in 108 (d), the copy must become the property of the user and the library must not have any knowledge of the user's intention to use the copy for anything but private study, scholarship or research. Also, the library is required to print a copyright warning on the request form and to display a copyright warning sign in the photocopying area.

Section 108 (f) exempts libraries and their employees from liability for the photocopying machines that are located on library property but not supervised by the library staff, provided that the machines display a prominent warning of possible copyright infringement. The exemption does not extend

to the library users making the copies, if the copyright warning sign has been posted and the users exceed fair use. Section 108 (f) also states that it is not the intention of this section to limit the reproduction of small sections of copyrighted works. Nor does section 108 (f) interfere with any contractural agreement regarding photocopying that a library may have entered into with an individual copyright owner (West Publishing Company, 1976).

Section 108 (g) emphasizes that the copying that has been referred to in the previous section must be single copies of a copyrighted work and must not be systematic in nature. Interlibrary networks were excluded from these restrictions as long as their copying did not become a substitute for the copyrighted work. The National Commission on New Technological Uses of Copyrighted works consulted with the interest groups involved in the photocopy controversy and came up with some guidelines for interpreting section 108 (g). According to Winkler (October 11, 1976), the guidelines are: (1) a library, for interlibrary loan purposes may not make more than six copies a year from a periodical published during the last five years, and (2) a library, for interlibrary loan purposes, may not make more than six copies a year of small excerpts from longer works.

Section 108 (h) of the 1978 Copyright Law describes the audio visual works which are not covered under the other sections of 108. Section 108 (i) provides for an evaluation of the effectiveness of the new Law by requiring that the Register of Copyrights submit to the Congress a report regarding the extent

to which the rights of the copyright owner and user have been equalized by the law. The Register is to consult with all the interest groups involved in the photocopying controversy. Problems should be identified and, if necessary, additional legislation should be recommended (West Publishing Company, 1976).

Section 109 of the 1978 Copyright Law pertains to a situation in which the owner of a copyrighted work has transferred ownership of a copy of that work to someone else. In this case, the person who owns the copy is permitted to dispose of that one copy as he wishes. This right is not extended to the person who possesses a copy of the work unless he has actually acquired ownership of it from the copyright owner. Thus a library that has purchased a book for its collection would not have the exclusive right to that work unless it had obtained, in addition, copyright control of that copy of the book from the copyright owner.

Section 201 of the new law states that initial copyright ownership rests with the author or authors of the work and section 302 defines the duration of the copyright as the life of the author of the work, plus an additional fifty years. This is an increase from the present law which provides for twenty-eight years of copyright protection from the initial creation of the work plus an additional twenty-eight year renewal (West Publishing Company, 1976).

Sections 401 through 404 are concerned with the notice of copyright and their content is similar to that of the 1909 Copyright Law. The big change is in section 405. Under section 405 of the new Copyright Law (West Publishing Company, 1976,

6192):

> The outright omission of a copyright notice does not automatically forfeit protection and throw the work into the public domain. This not only represents a major change in the theoretical framework of American copyright law, but it also seems certain to have immediate practical consequences in a great many individual cases.

The length of copyright protection for works without the copyright notice will be five years. This will be important to libraries who often depend on the copyright notice in deciding whether or not to copy materials. However, section 405 (b) provides some protection for this innocent infringer. The West Publishing Company (1976, 6149) stated that:

> Where the infringement is completed before actual notice has been served - - as would be the case with respect to relatively minor infringements by teachers, librarians, journalists, and the like - - liability, if any, would be limited to the profits the infringer realized from the act of infringement. On the other hand, where the infringing enterprise is one running over a period of time, the copyright owner would be able to seek injunction against continuation of the infringement, ant to obtain full monetary recovery for all infringing acts committed after he has been served notice of registration.

Sections 501 through 510 of the new law are concerned with infringement of copyright. Section 501 identifies the infringer as anyone who violates any of the exclusive rights of the copyright owner, as provided by sections 106 through 118. The court may require the copyright owner to serve written notice of the action and a copy of the complaint upon any person who, according to the records of the Copyright Office, may be affected by the decision in the case. Section 502 provides that an injunction may be served on anyone accused of infringement to prevent further infringement. Section 503 gives

the court the power to impound the infringing articles and to, if deemed necessary, destroy or dispose of them.

Section 504 sets the extent of damages and profits for which the infringer may be liable. The two kinds of damages for infringement liability are: (1) actual damages to the copyright owner and any profits of the infringer and (2) statutory damage. Section 504 (c) explained that the copyright owner may elect to collect statutory instead of actual damages in the amount of not less than $250 and not more than $10,000 for each infringement of a single work (West Publishing Company, 1976). The amount awarded will be decided by the court. The court, if it finds the infringement was willful, may raise the sum of statutory damages to $50,000. Also, the court may lower the statutory damages to as little as $100, if it finds that the infringer was not aware that he committed an infringement.

Section 504 (c) provides that employees of nonprofit educational institutions, libraries and archives, who innocently infringed the copyright law while performing their duties, are not subject to statutory damages. The plaintiff, in these cases, must attempt to prove and collect actual damages (West Publishing Company, 1976).

It is evident from the examination of the sections of the 1978 Copyright Law pertaining to photocopying that the Law will help to equalize the rights of the copyright users with those of the copyright owners. Librarians and educators will both benefit from the inclusion of the doctrine of fair use in the new legislation. It will require more work on the part

of librarians and educators to assure themselves that they are photocopying within the guidelines of fair use, but the presence of definite guidelines will free them to make fair use copies without the fear of infringement. Libraries will also benefit from the exemption of their employees from liability for infringement when they make copies, within the guidelines of fair use, for a patron. The Law will free libraries, who have unattended photocopying machines containing the copyright warning, from the fear of infringement from the public use of these machines. The inclusion, in the Law, of guidelines for the interlibrary loan photocopying service is favorable to librarians and educators who were afraid that the new Copyright Law would eliminate this part of the interlibrary loan service. Perhaps, one of the most important provisions of the 1978 Copyright Law is that the Law will be reviewed for its effectiveness after five years. All interest groups will be able to provide input for the review and additional legislation may be proposed.

Conclusion

The new Copyright Law is the product of over twenty years of study, debate and compromise among the four interest groups involved. The need for revision of the copyright law was caused partly by technological advances in our society and partly by changes in the values of our society. Society today feels that the public should have access to copyrighted works.

The success of the new Law, as with the 1909 Copyright

Law, will depend on the good faith of the interest groups who will be monitoring the guidelines of the Law. The interest groups are prepared to comply with the 1978 Law but, as with any compromise, there are parts of it that are unacceptable to some of them. Librarians worry that the prohibition of systematic copying will be applied to interlibrary loan photocopying and educators feel that the new Copyright Law, because of its explicit guidelines, may be restrictive.

For the first time, with the posting of signs on photocopying machines for public use, the public will be made more aware of the possibilities of infringing the Copyright Law. In libraries, the user will have to be informed of the fact that he, and not the library making the copies for him, will be held responsible for any infringements of the Copyright Law.

From the review of the literature, it appears that the new Copyright Law has been successful in equalizing the rights of the copyright owner with those of the user of the copyrighted work. A serious attempt has been made, in the design of the Law, to clarify areas that, because of their ambiguity, had led to conflicts among the interest groups.

Chapter 4

PROCEDURES

The goals of this study were to arrive at photocopying guidelines for the South Campus Library's photocopying services that were within the boundaries of the new 1978 Copyright Law and to make these guidelines available to members of the South Campus Library, who were concerned about the impact of the new copyright legislation on photocopying for instructional use.

Three methods of investigation were utilized to complete the study:

1. The copyright literature was reviewed. The review was limited mostly to articles on copyright since 1909, with emphasis on articles that pertained to the photocopying of copyrighted literary works. It was assumed that a knowledge of the background of the photocopying controversy and a discussion of the interest groups involved were important in understanding the new Copyright Law and establishing photocopying guidelines. The review of the literature included:
   a. A study of the controversy over the photocopying of copyrighted works.
   b. A study of the interest groups involved in the photocopying controversy.
   c. A study of the development and implementation of the

doctrine of fair use.

d. A study of the photocopying regulations of the new Copyright Law of 1978.

2. The photocopying services at the South Campus Library were reviewed. The study was limited to the services presently provided for faculty and other libraries. The assumption was made that the services would have to be modified to conform to the photocopying regulations of the 1978 Copyright Law. The photocopy services that were reviewed included:

   a. Copies for Faculty for Instructional Use.

   b. Interlibrary Loan.

   c. Table of Contents.

   d. Missing Page Requests.

   e. Reserve.

3. The statistics from the South Campus Library's photocopying service request forms were tabulated. The statistical analysis was limited to the services provided during 1976. It was assumed that the results of the tabulation would provide an indication of the extent to which the copying presently being done would infringe the copyright owner's rights under the new Copyright Law. The information that was obtained from the tabulation of the 1976 photocopy requests was:

   a. The number of photocopies that were made of copyrighted works.

   b. The number of photocopies, for each South Campus Library

photocopying service, that were made of copyrighted works.

c. The number of pages photocopied from periodicals.

d. The number of pages photocopied from books.

e. The average number of pages, per request, that were photocopied.

f. The number of times that photocopies were made from the same periodical.

g. The number of times that photocopies were made from the same issue of a periodical.

These three methods of investigation supplied answers to thirteen questions related to the study of the 1978 Copyright Law's photocopying regulations and the effect they will have on library photocopying services. The questions and their answers are included in Chapter six.

Chapter 5

RESULTS

The three methods of investigation described in Chapter Four produced the following results:

Review of the Literature Results

1. The study of the controversy over the photocopying of copyrighted works identified an increase in the number and ease of use of photocopying machines as one of the reasons for the controversy. Another reason was the rapid growth of printed materials, which makes it impossible for one library, without interlibrary loan photocopies, to have access to all the literature on a subject. The third reason was that the copying of copyrighted works was occurring without the permission of the copyright owner. Publishers, authors, educators and librarians were identified as the four interest groups involved in the controversy. The review included an example of how these interest groups have tried unsuccessfully to solve the conflict through the courts.
2. The study of the interest groups involved in the photocopying controversy clarified the positions of the four interest groups. The publishers and authors had many of the same economic and property interests regarding copyrighted materials while the librarians and educators placed the public

interests first in their concern over the outcome of the photocopy controversy. The review clearly showed the divergent views in the copyright controversy. The many articles by and about the interest groups indicate that the interest groups were very active in shaping the new Copyright Law.

3. The study of the development and implementation of the doctrine of fair use included definitions of fair use and described how the doctrine evolved. The review contained the criteria that are used by the courts and the interest groups to determine fair use and it indicated some of the problems the courts and the interest groups have in deciding when the doctrine has been violated.
4. The review of the legislative background of the 1978 Copyright Law indicated that twenty years of study and discussion by the Congress and the interest groups went into the formulation of the new Copyright Law. Brief descriptions of the bills that were the basis for the 1978 Copyright Law were included in the review.
5. The study of the photocopying and related sections of the 1978 Copyright Law relied heavily on information from the November 20, 1975 Senate Judiciary Committee Report, the September 3, 1976 House Judiciary Committee Report and the House Conference Report Number 94-133. The copyright legislation is too recent for many interpretative articles to be available for review.

Results of the Review of the South Campus Library's Photocopying

1. The faculty requests for copies for instructional use are monitored closely by the Periodicals Department. Each faculty member who requests a copy must fill out a Request Form for Photocopying Library Materials for Instructional Use. (See Appendix A.) The material to be copied is either from a book or periodical and, if the faculty member requests more than five pages, he must obtain his department chairman's signature. The copyright warning appears at the bottom of the form and in the area where the materials are photocopied. The librarians of the Periodicals Department approve each request before the copies are made. The purpose of the copying must be for instructional use and faculty may receive only one copy of each request. Requests of several pages are screened to see whether more than half the book or periodical is being copied and most requests are limited to ten pages or less. A copyright warning sign is located in the area where the copies are made. After the photocopying has been completed, the request card is kept by the Periodicals Department of the South Campus Library as a record of the transaction.
2. The copies requested for interlibrary loan are received from other libraries on a standard interlibrary loan Library Photoduplication Order Form. (See Appendix C.) The following statement is at the bottom of the form: "NOTE: This material is requested in accordance with the

A. L. A. (American Library Association) recommendations concerning the photocopying of copyrighted materials." The South Campus Library's interlibrary loan librarian transfers the request to a Request Form for Photocopying Library Materials for Instructional Use and one of the Periodicals Department's librarians must approve the photocopying before the copies are made. The copyright warning appears on the request form and in the area where the copies are made. The requests are limited to an article from a periodical per request. The copies are sent to the requesting library by the interlibrary loan librarian and the request form, that was filled out by the interlibrary loan librarian, is kept by the Periodicals Department as a record of the transaction.

3. The Table of Contents Service provides faculty with the copies of the contents pages of current issues of periodicals. Up to five periodical titles may be selected for this service by each faculty member. The faculty member may request one copy of one article on the contents page for instructional use. The Table of Contents Form, that is sent to all faculty once a year, contairs a warning of copyright. (See Appendix D.) The request for the photocopy must be made on a Request Form for Photocopying Library Materials for Instructional Use, which contains the copyright warning. Each copy request must be approved by one of the Periodicals Department's librarians before the copies are made. After the photocopying has been completed, the request card is kept by the

South Campus Library, as a record of the transaction.

4. The Missing Page Request Service is an intercampus photocopying service among the Miami-Dade libraries. Its purpose is to replace pages missing from periodicals with photocopies of those pages. The request is made in memo form from one librarian to another. It is limited to one copy and to approximately ten pages of a periodical per request. If the request for copies is approved by the Periodicals Librarian receiving it, the information is transferred to a Request Form for Photocopying Library Materials for Instructional Use. The completed copies are forwarded, with the memo, to the requesting library and the request form is kept as a record of the transaction.

5. The photocopying service for Reserve consists of copying portions of a book or periodical and placing these copies in the South Campus Library's Reserve Room for student use. Photocopies are used for periodicals placed on reserve so that the originals are protected and the materials are accessible to the whole class. The faculty member requests the photocopies through the Reader's Services Department of the Library. The Chairman of the Reader's Services Department fills out a Request Form for Photocopying Library Materials for Instructional Use and forwards it to the Periodicals Department where the Chairman of the Periodicals Department approves or disapproves it. Depending on the size of the class that will

be using the material in the South Campus Library's Reserve Room, up to five multiple copies of the material may be made. The photocopies are forwarded to the South Campus Library's Reserve Room and the request card is kept as a record of the transaction.

The Results of the Statistical Analysis

Statistics were obtained from the South Campus Library's 1976 photocopying request forms for the Library's five photocopying services. Only the completed photocopying requests of copyrighted works for faculty were analyzed. The total number of photocopies of copyrighted materials made by the South Campus Library during 1976 was 10,852. This total was analyzed by copies per service and pages copied per service from books and from periodicals. The results of this data analysis have been summarized in the following table.

Table 1

Copies of Portions of Copyrighted Works Made by the South Campus Library's Photocopying Services During 1976

Title of photocopying service	Total copies by service	Pages copied from periodicals	Pages copied from books
Instructional Use	4,416	3,657	759
Interlibrary Loan	409	409	
Table of Contents	5,299	5,299	
Missing Page Requests	582	582	
Reserve	146	115	31
Total	10,852	10,062	790

The figures in Table 1 indicate that approximately 92 percent of the South Campus Library's photocopying is from periodicals, with the most copies being made for the Instructional Use and Table of Contents services. The small percentage of copying from books can be explained, partly, by the fact that the Inter-library Loan,Table of Contents and Missing Page Requests services are limited to copying from periodicals only.

The data obtained from the 1976 photocopying requests was analyzed further to determine the number of times that photo-copies were made from the same periodical title and the number of times that photocopies were made from the same periodical issue. Table 2 contains an analysis of this data.

Table 2

Frequency of Copying of the Same Copyrighted Periodical Titles and Issues by the South Campus Library During 1976

Number of times copied	Periodical titles	Periodical issues
1	254	390
2	53	27
3	28	6
4	27	3
5	5	1
6	8	
7	1	
8	5	
9	4	
10	2	
11	1	1
12	2	

The data analysis presented in Table 2 indicates that the major-ity of the 390 periodicals titles and 428 issues photocopied by by the South Campus Library were only copied once during 1976.

There were 38 periodical issues and 136 periodical titles that were photocopied more than once.

The average number of pages of copyrighted works that were photocopied during 1976 was obtained by dividing the total number of copies of copyrighted works made during 1976 by the total number of request cards for photocopies of copyrighted works received during 1976. The result was an average of 8 pages per request.

The findings of the three methods of investigation were that the present Miami-Dade photocopying services do not deviate drastically from the new Copyright Law but they will have to be modified slightly in order to comply. The present photocopy request forms do not record all the data elements that will have to be considered in order to avoid infringement under the new Copyright Law.

Chapter 6

DISCUSSION, IMPLICATIONS AND RECOMMENDATIONS

Discussion

The results of the three methods of investigation proved to be helpful in the preparation of recommendations for the guidelines of the South Campus Library's photocopying services. The review of the literature provided a background of the copyright law and the controversy which was instrumental in the writer's interpretation of the 1978 Copyright Law. Also, it furnished a review of the major photocopying regulations of the 1978 Copyright Law. The study of the South Campus Library's photocopying procedures and the statistical analysis provided information which was necessary to determine the changes that the South Campus Library needed to initiate in order to be within the photocopying guidelines of the new Copyright Law.

The thirteen questions that were referred to in Chapter Four can be answered by using the results of the review of the literature, the review of the procedures of the South Campus Library's photocopying services and the statistical analysis of the South Campus Library's 1976 photocopy request forms:

1. What is Copyright?

   Copyright is "the right of an author to control the reproduction and dissemination of his work after it has been disclosed" (Congressional Quarterly Service, 1965, 658).

2. What is the background of the controversy over the photocopying of copyrighted materials?

   The background of the controversy is described in Chapter Three, page 11-14 of this study.

3. What interest groups are involved in the photocopy controversy?

   The interest groups involved in the photocopying controversy are educators, librarians, authors and publishers.

4. What is the doctrine of fair use?

   The doctrine of fair use is an agreement between the copyright owners and the users of copyrighted materials that permits the reproduction of copyrighted works for educational purposes.

5. How did the doctrine of fair use evolve?

   A description of the development of the doctrine of fair use can be found in Chapter Three, pages 21-23 of this study.

6. What has been considered an infringement of fair use?

   Copying the entire copyrighted work without the author's permission, receiving a profit from the sale of the photocopied work and diminishing the copyright owner's profits by the sale of the photocopy.

7. What is the legislative history of the Copyright Act that will become law January 1, 1978?

   The legislative background of the 1978 Copyright Law is recounted in Chapter Three, pages 23-26 of this study.

8. What regulations will the new Copyright Law contain for the photocopying of copyrighted works?

The regulations of the 1978 Copyright Law that will affect library photocopying are identified and discussed in Chapter Three, pages 26-37 of this study.

9. What photocopying services does the South Campus Library provide for faculty?

The South Campus Library provides the following photocopying services for faculty:

a. Copies for Faculty for Instructional Use.

b. Interlibrary Loan.

c. Table of Contents.

d. Missing Page Requests.

e. Reserve.

10. What are the guidelines for the South Campus Library's photocopying services and how are they monitored to prevent copyright infringement?

The guidelines and the monitoring procedures are described in Chapter Four, pages 43-46 of this study.

11. How many copies of copyrighted materials were made during 1976 for each of the South Campus Library's photocopying services?

The answer to this question can be obtained by studying Table 1, page 46 of this study.

12. Are the South Campus Library's photocopying guidelines and 1976 statistics within the boundaries of the photocopying regulations of the new 1978 Copyright Law?

The majority of the South Campus Library's photocopying procedures are in compliance with the Law, but there are a few changes and additions to the guidelines that will have

to be made. The Library does not have copyright warning signs on its coin operated copying machines for public use. The copyright notice for the copying machine that is operated by the Library's employees does not have all of the guidelines of the new Copyright Law. The Library does not keep a record of the types of materials that are copied from books and periodicals. Nor does it record the number of times that works by the same author are copied. The South Campus Library keeps a record of the periodical titles and issues copied but it does not keep an ongoing total of the number of times photocopies are made from periodical titles and issues during one year. Presently, the Library does not count the number of words in articles or portions of books that are copied.

13. If the South Campus Library's photocopying guidelines and 1976 statistics are not within the boundaries of the photocopying regulations of the new 1978 Copyright Law, how can they be modified to comply with the new Law?

The South Campus Library will have to post copyright warning signs on all of its coin operated copying machines. The copyright warning sign for the machine that is operated by the Library staff will have to be revised to include the guidelines of the new Law. The Request Form for Photocopying Library Materials for Instructional Use will have to be revised to include spaces to record the types of materials that are being copied from a book or periodical, the approximate number of words per request and the name of the author of the work being copied. The Library will have to

begin keeping a monthly, as well as yearly, total of the number of times that photocopies are made from periodical titles and issues.

Implications

The photocopying regulations of the new Copyright Law will have an effect on every library and educational institution in the United States. An inquiry into the photocopying controversy and how the new Law has attempted to solve it was essential. The study of the interest groups in the photocopying controversy indicated that educators and librarians were fearful of unwittingly committing photocopying infringements and that they weredissatisfied with the 1909 Copyright Law because it did not have specific photocopying regulations. Now, a new Copyright Law has been enacted that is partially the product of the input of educators and librarians. The Law does include the doctrine of fair use and it contains sections that apply directly to the photocopying problem. It may eliminate much of the librarians' and educators' concerns over photocopying infringement. In order to discern how the new Law may alleviate these concerns, it was necessary to determine which sections of the new Copyright Law will apply to the photocopying of literary works and to review these sections.

This copyright study has provided a necessary review of the South Campus Library's present photocopying services. The study indicated that all of the services included provisions for the protection of copyrighted materials in their copying procedures. It identified additional photocopying procedures

that the South Campus Library will need to adopt in order to comply with the 1978 Copyright Law.

In addition, the Miami-Dade faculty and the staff of the South Campus Library will develop a better understanding of the reasons for the new Copyright Law by reading this study. The review of the literature defines the positions of the interest groups in the photocopying controversy, the development of fair use and the twenty-year legislative history that led to the enactment of the 1978 Copyright Law.

Recommendations

The South Campus Library should make the necessary changes in its photocopying procedures to be in compliance with the new Copyright Law, when it becomes effective January 1, 1978. The changes will include the posting of copyright warning signs on all of the coin-operated copying machines and a revision of the sign that is currently displayed in the area where the copying machine, that is operated by the Library staff, is located. A sample of a copyright warning sign that might be used for all of the machines is included in the Appendix. (See Appendix E.) The sign may, of course, have to be redesigned again when the Copyright Office completes its study of copyright display signs and proposes a uniform sign for all library copiers.

The Request Form for the Photocopying of Library Materials for Instructional Use should be revised to include spaces to record the types of materials that are being copied from a book or periodical, the approximate number of words per request and the name of the author of the work being copied. A sample

of the redesigned form,with the suggested additions, is included in the Appendix. (See Appendix F.)

The South Campus Library should begin keeping a monthly, as well as yearly, total of the number of times that photocopies are made from the same periodical titles and issues.

In addition, it is recommended that the South Campus Library make this study available to interested faculty members and that additional interpretations of the photocopying regulations of the 1978 Copyright Law be attached to this study, as they become available.

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APPENDIXES

REQUEST FORM FOR PHOTOCOPYING LIBRARY MATERIALS
FOR INSTRUCTIONAL USE

Description of Material:
(If book: author, title, publisher, date and pages.)
(If periodical: periodical title & date, article title, author and pages.)

_____

_____

_____

Total number of pages requested _____

Name and Department _____

Telephone No. _____ Room No. _____

Department Chairman's Approval _____

Date of Request _____ Completion Date _____

NOTE: ANY INFRINGEMENT OF THE COPYRIGHT CODE RESULTING FROM THIS COPYING IS AT THE PATRON'S RISK. WE RESERVE THE RIGHT TO WITHHOLD DUPLICATING SERVICE WHERE A KNOWN COPYRIGHT VIOLATION IS BEING INCURRED.

MIAMI-DADE COMMUNITY COLLEGE / South Campus, 11011 S.W. 104 Street, Miami, Florida 33176

February 28, 1977

National Ed.D Program for
Community College Faculty
Nova University
Fort Lauderdale, Florida

To Whom It May Concern:

The study of copyright legislation as it relates to library photocopying services, which is proposed as a practicum project by Marcia Fallon, Chairman of the Periodicals Department of the South Campus Library, is most pertinent at this time since the Library must be prepared to work within the framework of the new Copyright Law which goes into effect January 1, 1978.

The Library provides approximately 6,500 photocopies per month for such services as interlibrary loan, the "Table of Contents" service, faculty instructional needs, library copying for reserve use and to replace missing pages of books and periodicals for the other three Miami-Dade Libraries. The practicum will assess these services, as they relate to the new Copyright Law and furnish information that the South Campus Library needs in order to monitor its photocopying services so that it can continue to provide these much-needed services without incurring infringement under the Copyright Law of 1978.

Sincerely,

Jo E. Dewar
Director, Library Services

JED:aa

An Equal Opportunity Employer

LIBRARY PHOTODUPLICATION ORDER FORM

Requesting Library Fill in form send sheets A and B to Supplying library.

Date of request: Requester's Order No. ..... Supplier's Order No. ..... **A**

Call-No.

Miami Dade Junior College
South Campus Library
Interlibrary Loan Department
11011 S. W. 104th Street
Miami, Florida 33156

Author (or Periodical title, vol. and year)

Fold →

Title (with Author and pages for periodical articles) (incl. edition, place and date)

☐ Any edition

Verified in (or Source of reference)

Request ☐ microfilm ☐ photoprint ☐ Other Remarks:

NOTE: This material is requested in accordance with the A. L. A. recommendations concerning the photocopying of copyrighted materials.

ORDER AUTHORIZED BY:

REPORTS:

NOT SENT BECAUSE:
- ☐ Not owned by Library
- ☐ File is incomplete
- ☐ In use
  - ☐ Hold Placed
  - ☐ Request again
- ☐ Publication not yet received
- ☐ Please verify your reference
- ☐ Other:
- ☐ Suggest you request of:

Estimated Cost of Microfilm .....
Photoprint .....
Please pay in advance ☐
Please do not pay in advance ☐

← Fold

Please send cost estimate for
☐ microfilm ☐ photoprint

Go ahead with the order if it does not exceed: $ .....

Special instructions:

Supplying Library Fill in pertinent items under REPORTS; return sheet B to Requesting library.

CAT NO. 23225 BRO-DART INDUSTRIES

FALL 1976

MEMORANDUM

TO: ALL FACULTY MEMBERS

FROM: THE PERIODICALS DEPARTMENT OF THE SOUTH CAMPUS LIBRARY

SUBJECT: CIRCULATION OF PERIODICAL "TABLE OF CONTENTS" SERVICE

The "Table of Contents" Service will be offered to faculty by the Periodicals Department of the South Campus Library for another year. The purpose of the service is to keep the faculty aware of current articles which might aid them in their research or student assignments.

This year everyone wishing to receive the Table of Contents Service is being asked to fill out the attached form and send it to the Periodicals Department, South Campus Library, Rm. 2245. Since request forms for previous years will be destroyed, only those faculty members who fill out and return the attached form will receive the Table of Contents Service.

Each faculty member may select up to five academic periodicals in his subject area. When a current issue of the periodical is received by the Library, a copy of the table of contents will be made and sent to the faculty member who requested it. We hope that by scanning these lists, busy faculty members may quickly identify those articles they wish to locate when they come to the Library.

Current issues are used in the Library only, but since we lend back issues of magazines for one week, faculty members may wish to check out and peruse items of interest at some leisure. Photocopies may be made consistent with copyright laws (one copy of one article from a listing) if the article is for instructional use. In order to request this, a Xeroxing Request Card may be obtained, completed and returned to the Periodicals Department, Room 2245.

A subject listing of the periodicals received by the South Campus Library is available in the Periodicals office on the second floor of the Library, or you may call extension 1221 and request a list of the titles in your subject area.

TABLE OF CONTENTS CIRCULATION REQUEST FORM

Please send Xerox copies of the tables of contents of the following periodicals to:

_____

Name of Faculty Member

_____

Campus address, Department, Building and Room No.

Periodicals Selected: 1. _____

2. _____

3. _____

4. _____

5. _____

RETURN TO: PERIODICALS DEPT., ROOM 2245, SOUTH CAMPUS LIBRARY

COPYRIGHT PHOTOCOPYING REGULATIONS

Copyright is the right of authors to control the reproduction of their work. The copyright notice usually appears on the title page of a work or on the reverse side. A literary work without a copyright notice still has copyright protection for five years. The user of the copy will be held responsible for any infringement of the Copyright Law. Copyright infringement may result in the copyright owner collecting damages from the person who infringed the Law of $250 to $10,000.

Copying that is Permitted

1. Spontaneous copying - thetime period between the decision to copy and the need to use the work is short.

2. A single copy for research or teaching of:
   a. a chapter from a book
   b. an article from a periodical or newspaper
   c. a short story, essay or poem
   d. a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper

3. Multiple copies for classroom use only (one per student) of:
   a. a poem of less than 250 words
   b. an excerpt of 250 words from a longer poem
   c. a complete article, story or essay of less than 2,500 words
   d. an excerpt from a prose work of less than 1,000 words or 10 per cent of the work
   e. one chart, graph, diagram, drawing, cartoon or picture per book or periodical.

Copying Should Not

1. Be for more than one course in the school
2. Exceed one short poem, article, story or essay or two excerpts from the same author
3. Exceed three copies from the same collective work or periodical volume during one class term
4. Create or take the place of an anthology or collected work
5. Be made from textbooks
6. Substitute for the buying of the book, periodical or reprint
7. Be continued from term to term, if the materials are the same each term

REQUEST FORM FOR PHOTOCOPYING LIBRARY MATERIALS
FOR INSTRUCTIONAL USE

Description of Material:
(If book: author, title, publisher, date, pages and content e.g. poem, graph, etc.)
(If periodical: Periodical title and date, article title, author, pages and content e.g. poem, graph, etc.)

_____

_____

_____

Total number of pages requested_____

Approximate number of words in requested copy_____

Name and Department_____

Telephone No._____ Room No._____

Department Chairman's Approval_____

Date of Request_____ _____Completion Date_____

NOTE: ANY INFRINGEMENT OF THE COPYRIGHT CODE RESULTING FROM THIS COPYING IS AT THE PATRON'S RISK. WE RESERVE THE RIGHT TO WITHHOLD DUPLICATING SERVICE WHERE A KNOWN COPYRIGHT VIOLATION IS BEING INCURRED.

UNIVERSITY OF CALIF.
LOS ANGELES

JUL 23 1977

CLEARINGHOUSE FOR
JUNIOR COLLEGES